

APPLICANTS:
Alvin Filbert Jr. and Diana Filbert

REQUEST: A variance to permit an addition within the required 35 foot rear yard setback in the R2 District

HEARING DATE: April 26, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5528

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Alvin Filbert, Jr.

CO-APPLICANT: Diana Filbert

LOCATION: 702 Brier Court – Brierhill Estates, Bel Air
Tax Map: 49 / Grid: 2F / Parcel: 060 / Lot: 11
Third (3rd) Election District

ZONING: R2 / Urban Residential

REQUEST: A variance pursuant to Section 267-36(B), Table V, of the Harford County Code, to permit an addition to encroach into the 35 foot rear yard setback (27 foot setback proposed) in the R2/COS District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant Alvin Filbert, Jr. described the Applicants' property as being improved by a brick sided, two story dwelling unit, with attached two car garage and walk-out basement. The improvements sit on a one quarter acre lot within the Briarhill Estates subdivision of Harford County. The Co-Applicants have resided on the property with their two children for approximately eleven and a half years.

The home has, as one looks at the dwelling from the street side, a sunroom addition to its rear right side. No variance was requested or needed for that addition. The sunroom in fact sits on a deck above the ground level walk-out basement area and forms an additional living space to the first floor living area of the home. The area under the sunroom has been enclosed.

The Applicants now wish to construct a second sunroom to the left rear of their home which would act somewhat to off-set the existing sunroom. However, the second proposed addition would fall within the existing setback, being proposed to be as close as 27 feet to the rear yard lot line, which would be an 8 foot encroachment. Due to the angle of the proposed sunroom to the rear lot line, the setback encroachment would diminish to as little as 2 feet on the northern end of the proposed addition. Accordingly, the addition would lie between 27 feet to 33 feet from the rear lot line, requiring a variance of from 8 feet to 2 feet.

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Mr. Filbert described his lot as pie-shaped, located on a cul-de-sac. The lot to his left is rectangular in shape, as is the lot to his rear and as most other lots in his neighborhood.

Mr. Filbert stated there are approximately 150 homes within his subdivision, with his lot being the most unusual in shape. In addition to the irregular outline of his lot and its location on a curving cul-de-sac, the house is setback at one corner approximately 3-1/2 feet from the front yard setback line. Mr. Filbert believes that no variance would have been necessary if the house were more properly located on the front yard setback line. This would have required the house footprint to be rotated a few degrees, which Mr. Filbert believes would have given him more available room in the rear of the yard.

The room will be glass and vinyl sided, with the siding and the roof similar in appear to the existing house. The ground level, at the area of the walk-out basement, will be enclosed. The roof will be similar in composition and style to the existing house and the existing addition.

Mr. Filbert stated that no neighbors had objected to this requested variance. A similar variance was granted for a home just to the rear of his property.

A tree line exists to the left and behind the home. The home to the right faces away from the Filbert property and also has some planted trees in the area closest to the rear yard of the Applicants. The neighborhood in general has had a number of similar additions constructed over the years. Mr. Filbert believes the addition, as it would be an attractive improvement to his home, would increase the value of his home and the attractiveness of his neighborhood. Mr. Filbert believes there will be no detrimental impact to any adjoining property owner or the neighborhood.

Next testified Anthony McClune for the Harford County Department of Planning and Zoning. Mr. McClune described, in support of Mr. Filbert's testimony, numerous other additions throughout the neighborhood which are similar to that proposed by the Applicants.

The subject property is at the end of a cul-de-sac, and located on a curve. Because of the curve the house is set somewhat back behind the front yard setback line. As the house is not located directly on the front yard setback line, and given the narrowness of the lot, particularly on its left side, the property is, in Mr. McClune and the Department's opinion, unique and the variance is justified. Mr. McClune does not believe the variance would detrimentally impact either the neighborhood or surrounding properties.

There was no evidence or testimony presented in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants request permission to construct a 16 foot by 18 foot sunroom addition to the rear of their home. The addition would match in color and design the existing home, and more importantly match in color and design an existing addition to the home opposite the proposed location. The proposed sunroom would encroach, at most, 8 feet into the existing 35 foot rear yard setback. The encroachment would decrease to approximately 2 feet to the north as the addition would not be parallel to the rear lot line.

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The subject property is an attractive two-story single family residence in a subdivision of similar residences. Uncontradicted testimony was presented that similar additions have been constructed throughout the neighborhood and, in fact, a residence to the rear of the subject property also requested and was granted a variance for a similar construction.

There is further uncontradicted evidence that the granting of the requested variance would not detrimentally impact any adjoining property or the neighborhood as a whole, and would contribute to the attractiveness of the area and the value of the Applicants' property.

What is also uncontradicted is that the Applicants' lot is a very uniquely configured and located parcel compared to others in its neighborhood. The site plan submitted with the application (Attachment 3 to Staff Report), shows the southeastern side lot line as being approximately 100' long, whereas the northerly side yard is approximately 221 feet long, with the rear yard lot line being 217 feet long, and the front part of the property being not much more than 150 feet wide. This, together with the fact that the property sits on a sharply curving cul-de-sac creates a narrow building envelope at the location of the proposed addition. If the home had been somewhat rotated during construction so as to more closely parallel the front yard setback line, it is apparent that no such variance would have been necessary.

It is found, accordingly, that there exists an unusual aspect of the Applicants' property which causes them hardship. That hardship is the inability to construct a sunroom similar in size, shape and appearance to others in the neighborhood and, indeed, similar in size, shape and appearance to the addition already constructed on the subject property. It is further found to present no adverse impact to any adjoining property or to the neighborhood.

CONCLUSION:

Accordingly, for the above reasons it is recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections for the addition.

Date: May 16, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 14, 2006.